



[4830-01-p]

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Nonqualified Deferred Compensation and IRC Section 409A.**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

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**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning nonqualified deferred compensation and IRC section 409A.

**DATES:** Written comments should be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER] to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue N.W., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue N.W., Washington DC 20224, or through the internet, at [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov).

#### **SUPPLEMENTARY INFORMATION:**

**Title:** Nonqualified Deferred Compensation and IRC Section 409A.

**OMB Number:** 1545-2164.

**Regulation Project Number:** TD 9321, Notices 2008-113, 2010-6, and 2010-80

**Abstract:** Nonqualified deferred compensation plans subject to IRC Section 409A must comply with IRC Section 409A both in operation and in form. Failures to comply with these requirements will cause amounts deferred under the plan to be included in income and subject to the additional taxes under IRC Section 409A to the extent the amounts are not subject to a substantial risk of forfeiture and not previously included in income. In response to requests from taxpayers that a mechanism be created to allow them to correct operational failures and failures to comply with the plan document requirements without incurring all of the adverse tax consequences that would otherwise apply, the IRS and Treasury issued a series of notices providing for self-correction of certain operational and documentary failures.

The current guidance is Notice 2008-113, 2008-2 C.B. 1305 (operational failures), Notice 2010-6, 2010-3 I.R.B. 275 (document failures) and Notice 2010-80, 2010-51 I.R.B. 853 (modifying Notices 2008-113 and 2010-6). The notices specify the types of failures that may be corrected, the timeframes within which correction must be completed, the participants who are eligible for correction, what must be done to correct and the taxes (if any) that must be paid. Generally, the notices require the employer (and in many cases the employee) to attach a statement to their tax returns disclosing that a correction has occurred and to inform the revenue agent of the correction at the beginning of an examination

**Current Actions:** There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Individuals or Households, Farms, and Businesses and other for-profit organizations.

**Estimated Number of Respondents:** 20,000.

**Estimated Time Per Respondent:** 30 mins.

**Estimated Total Annual Burden Hours:** 10,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Desired Focus of Comments:** The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

R. Joseph Durbala,  
IRS Tax Analyst

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